



**FOIA re. EPA animal feeding operation records**  
**Tarah Heinzen** to: FOIA HQ

07/22/2013 10:57 AM

Dear FOIA Officer,

Attached please find a FOIA request for records related to EPA's assessments of air emissions from animal feeding operations and two pending citizen petitions.

Best,

Tarah Heinzen

Attorney

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2013.07.22 EPA NAEMS FOIA.pdf



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July 22, 2013

*Via Electronic Mail to FOIA\_HQ@EPA.gov*

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
Mail Code 2822T

RE: Freedom of Information Act Request for Information Related to the  
Environmental Protection Agency's Emissions Estimating Methodologies Process  
for Animal Feeding Operations

Dear National Freedom of Information Officer,

In accordance with the Freedom of Information Act (FOIA), 5 U.S.C. §552, and pursuant to U.S. Environmental Protection Agency (EPA) regulations set forth in 40 CFR § 2, Environmental Integrity Project (EIP) hereby requests EPA to send copies of all records described in this letter to the address below. EIP asks that you respond to this request, in accordance with FOIA and EPA regulations, within twenty working days of the date on which the FOI Office receives and logs the request.

This request applies to agency files in any form, and also covers any non-identical duplicates of records that by reason of notation, attachment or other alteration or supplement includes any information not in the original record. This request does not exclude additional records that, though not specifically requested, have a reasonable relationship to the subject matter of this request.

### **RECORDS REQUESTED**

EIP requests records related to EPA's Emissions Estimating Methodology (EEM) process for Animal Feeding Operations (AFOs), EPA's National Air Emissions Monitoring Study (NAEMS), the Science Advisory Board's (SAB) April 19, 2013 Report on EPA's draft EEMs for broiler AFOs and for lagoons and basins at swine and dairy AFOs (hereinafter referred to as the SAB Report), and two pending citizen petitions to regulate AFO air emissions. Unless otherwise stated, EIP is only requesting records and communications dated on or after December 2010. We request the following records:



- 1) All records, including all communications, shared or otherwise maintained, not including monitoring data, in connection with the NAEMS study, between EPA staff and NAEMS study participants and researchers, including but not limited to:
  - The SAB AFO Emissions Review Panel, including individual members;
  - Purdue University staff, including but not limited to NAEMS Science Advisor Albert Heber;
  - The Agricultural Air Research Council or any of its members or representatives;
  - The Agricultural Air Quality Task Force or any of its members or representatives;
  - Industry organizations representing AFOs and CAFOs, including but not limited to the National Chicken Council, the American Farm Bureau Federation, and the National Pork Producers Council;
  - Attorneys, lobbyists, or other representatives of the livestock industry or specific livestock interest groups;
  - Owners or operators of participating AFOs.
- 2) All records, including all communications, related to the April 2013 SAB Report.
- 3) All records, including all communications, shared or otherwise maintained in connection with EPA's EEM development process between EPA staff and persons or organizations involved in the EEMs process, including but not limited to:
  - The SAB Animal Feeding Operations Emission Review Panel, including individual members;
  - Purdue University staff, including but not limited to NAEMS Science Advisor Albert Heber;
  - The Agricultural Air Research Council or any of its members or representatives;
  - The Agricultural Air Quality Task Force or any of its members or representatives;
  - Industry organizations representing AFOs and CAFOs, including but not limited to the National Chicken Council, the American Farm Bureau Federation, and the National Pork Producers Council;
  - Attorneys, lobbyists, or other representatives of the livestock industry or specific livestock interest groups;
  - Owners and operators of participating AFOs;
  - Citizens or organizations inquiring about the EEMs process.
- 4) All internal EPA communications related to the NAEMS or AFO EEM development process.
- 5) Studies, summaries, or reports created from or related to the EEM process, not including the SAB Report and related documents available on EPA's website.
- 6) All records, including all external and internal communications, shared or otherwise maintained by EPA, related to the April 5, 2011 Environmental Integrity Project et al. petition for the regulation of ammonia as a criteria pollutant under Clean Air Act sections 108 and 109.



- 7) All records, including all external and internal communications, shared or otherwise maintained by EPA, related to the September 21, 2009 Humane Society of the United States, et al. petition to list concentrated animal feeding operations under Clean Air Act Section 111(B)(1)(A) of the Clean Air Act, and to promulgate standards of performance under Clean Air Act Sections 111(B)(1)(B) and 111(D).

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials. EPA need not produce documents that are currently available at

<http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/BOARD> or elsewhere on EPA's website.

### **CLAIMS OF EXEMPTION OF DISCLOSURE**

If you regard any requested documents as exempt from required disclosure under FOIA, EIP asks that you please exercise your discretion to disclose them. After careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide any reasonably non-exempt portions of exempt records and communications, as required by FOIA.

Rather than waiting until all requested records and communications have been assembled for the time period requested, EIP asks that you disclose this information as it becomes available to you. Should you elect to invoke an exemption to FOIA, please provide the required full or partial denial letter and sufficient information to appeal the denial.

In accordance with the minimum requirements and regulations of your due process, this information should include:

- 1) Basic factual material, including the author, origin, date, length, and address of withheld items; and
- 2) Explanations and justifications for denial, including identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the material withheld.

### **FEE WAIVER REQUEST**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EIP requests a fee waiver because "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA's FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

**Factor 1:**     *The Requested Records Concern the Operations or Activities of the Federal Government.*



The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), because the requests relate to EPA’s records and communications concerning the EPA EEM process, the status of EPA’s NAEMS data analysis, the SAB Report, and EPA’s actions to regulate AFO emissions pursuant to its EEM process and pending citizen petitions. These records concern EPA’s regulatory responsibilities under the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to Know Act (EPCRA). Final methodologies will provide a basis for future modeling efforts that will directly influence the EPA’s ability to characterize emissions exposure in rural communities.

**Factor 2: *Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.***

Disclosure of the requested records is “likely to contribute” to an “increased public understanding” of government operations or activities, 40 C.F.R. § 2.107(l)(2)(ii), because such disclosure will enable EIP and the public to understand the effects of the SAB Report as well as the factors affecting EPA’s decision-making process as the Agency moves forward with the EEMs process for AFOs. Additionally, the requested records will contribute to the public’s understanding of anticipated AFO regulatory responsibilities under the CAA, CERCLA, and EPCRA.

This information is not already accessible through EPA’s website. See Factor 4, below. Moreover, EPA’s activities related to NAEMS and AFO EEMs are not currently clear to the public because of uncertainty arising from the SAB Report and EPA’s increasingly long timeline for establishing AFO EEMs. EPA’s intentions related to pending petitions to regulate AFO emissions under the CAA are also unclear, and the information provided pursuant to this request will contribute to the public understanding of EPA’s consideration of these petitions and its assessment of different strategies to regulate AFO air pollution.

**Factor 3: *Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in How the Government is Acting in Response to the SAB April 2013 Final EEMs Report and in How the Government will Regulate Air Emissions from AFOs.***

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to develop EEMs for AFOs. EIP is a national nonprofit environmental organization that has made safeguarding the nation’s air and water one of its top priorities. EIP works to provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public’s health. Factory farm water and air pollution is one of EIP’s focal issues and EIP has developed expertise on these issues. EIP has an interest in the quality and implementation of EPA’s EEMs for AFOs. Additionally, EIP has participated in the EEMs process by participating in SAB meetings and relaying information to coalition partners. EIP also submitted comments on the draft broiler and



open source EEMs, docket ID No. EPA-HQ-OAR-2010-0960, on behalf of numerous national, regional and local organizations with broad memberships of concerned citizens.

Because of our expertise in this area, EIP is well-prepared to analyze and evaluate the records we receive pursuant to this request, assess them in the context of the statutory mandates of the CAA and other laws, and evaluate whether EPA's current course of action will result in adequate EEMs. In addition to being able to analyze the information provided to determine whether EPA's actions are adequate for development of EEMs, EIP has the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). EIP is well-prepared to provide plain-language analysis of these documents to citizens' organizations with an interest in EPA's actions and to members of the media. EIP frequently drafts and releases data-driven and policy-based reports that break down technical data and complex legal issues for the public. EIP regularly makes presentations to community groups concerning CAFOs and generates press releases concerning CAFO regulation. EIP attorneys have presented on NAEMS and EPA's EEM process on a CAFO air pollution panel at the 2012 Public Interest Environment Law Conference at the University of Oregon and at a 2011 Sustain Rural Wisconsin Network forum in Madison, Wisconsin. Additionally, EIP released a report in March 2011, titled "Hazardous Emissions from Factory Farms," based on initial NAEMS results obtained through EIP's December 2010 FOIA request, which received significant media coverage.

Finally, EIP regularly collaborates with national, regional, and local environmental and agricultural organizations, such as the Center for Food Safety, the Center on Race, Poverty & the Environment, Food and Water Watch, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Midwest Environmental Advocates, the Sierra Club, and the Socially Responsible Agriculture Project. EIP shares information it receives about AFO regulation and EPA's EEM process with these organizations and regularly collaborates with them to submit public comments related to AFO air pollution. EIP will share this information received pursuant to this request with these organizations and their memberships through listservs, community meetings, and other fora.

**Factor 4: *The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.***

The public's understanding of government operations or activities related to EPA's EEMs process "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). Because EIP, our coalition partners, and the public know little about the EPA's response to the SAB Report or about the status of the EEM process or the two pending citizen petitions to regulate AFO air emissions, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request. The EEM process and EPA's determinations on the pending citizen petitions will have a defining impact on public access to information under CERCLA and EPCRA and CAA protections for rural communities across the United States. Those communities living near AFOs are directly affected and particularly interested in EPA's decision-making process surrounding the development of EEMs, but the public at large will also benefit from insight into the EEM process and EPA's ongoing consideration of the petitions. None of the documents requested by EIP are currently available to



the public on the Internet or have been previously published by EPA. EIP and its coalition partners have demonstrated their ability to synthesize and widely disseminate pollution data and other public records related to AFO and CAFO regulation to the public, and these activities have significantly contributed to public understanding of EPA's regulatory activities.

In addition, this request also meets the second fee waiver requirement, that the request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1). The requester, EIP, is a 501(c)(3) nonprofit organization and does not have any "commercial interest that would be furthered by the requested disclosure" of information.<sup>1</sup> 40 C.F.R. § 2.107(l)(3)(i). Indeed, EIP's sole interest in obtaining the requested information is to broaden public understanding of EPA's decision-making process concerning the development of EEMs for AFOs.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

### INSTRUCTIONS FOR RECORD DELIVERY

Please provide the requested records as you collect and review them. To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Tarah Heinzen at [theinzen@environmentalintegrity.org](mailto:theinzen@environmentalintegrity.org), or mail them to:

Tarah Heinzen  
Attorney  
Environmental Integrity Project  
One Thomas Circle, NW, Suite 900  
Washington, DC 20005

In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at 202-263-4441.  
Thank you for your assistance in this matter.

Sincerely,



Tarah Heinzen

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<sup>1</sup> Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. See *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).